



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

MAY 30 2012

Mr. Casey W. Shirts  
H&S Performance, LLC  
4160 S. River Rd.  
St. George, UT 84790

Re: Notice of Violation issued to H&S Performance, LLC

Dear Mr. Shirts:

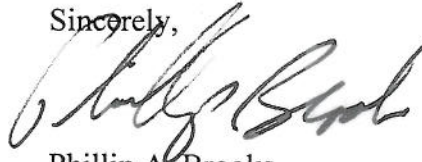
The United States Environmental Protection Agency (the EPA) is issuing the enclosed Notice of Violation (NOV) to H&S Performance, LLC (H&S).

The EPA has determined that H&S violated the section 203(a)(3)(B) defeat device prohibition of the Act, 42 U.S.C. § 7522(a)(3)(B), which prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device, where the person knows or should know that the part is being offered for sale or installed for such use or put to such use.

EPA offers you an opportunity to confer with us about the violations cited in the NOV. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring H&S into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Meetu Kaul. You may call her at (202) 564-5472 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks", written in a cursive style.

Phillip A. Brooks

Director

Air Enforcement Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**IN THE MATTER OF:**

**H&S Performance, LLC**

)  
)  
)  
) **Proceedings Pursuant to**  
) **Section 203(a)(3)(B) and 205 of the**  
) **Clean Air Act,**  
) **42 U.S.C. §§ 7522(a)(3)(B), 7524**  
)  
) **CAA-12-7992**  
)

**NOTICE OF VIOLATION**

The U.S. Environmental Protection Agency (the EPA) is issuing this Notice of Violation (NOV) to H&S Performance, LLC (H&S), for violations of the defeat device prohibition of section 203(a)(3)(B) of the Clean Air Act (Act), 42 U.S.C. § 7522(a)(3)(B). Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat or render inoperative a motor vehicle emission control device, where the person knows or should know that the part is being offered for sale or installed for such use. H&S manufacturers, offers for sale, and sells diesel particulate filter (DPF) delete kits, exhaust gas recirculation (EGR) delete kits, and electronic tuning devices products that are intended to bypass, defeat or render inoperative a motor vehicle emission control device or element of design intended to control motor vehicle emissions. From January 2, 2010, to July 20, 2011, H&S sold over 26,000 DPF delete, EGR delete, and electronic tuning devices in violation of section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B). These violations have resulted in significant emissions of nitrogen oxides (NO<sub>x</sub>) and particulate matter (PM) having been, and continuing to be, released into the environment.

**STATUTORY BACKGROUND**

1. "Motor Vehicle" is defined in section 216(2) of the Act, 42 U.S.C. § 7550(2), as "any self-propelled vehicle designed for transporting persons or property on a street or highway."
2. "Person" is defined by section 302(e) of the Act, 42 U.S.C. § 7602(e), to include an "individual, corporation, partnership, association . . . and any officer, agent, or employee thereof."



3. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity.
4. EPA issues certificates of conformity to vehicle manufacturers under section 206(a) of the Act, 42 U.S.C. § 7525(a), to certify that a particular class of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
5. Under section 202 of the Act, 42 U.S.C. § 7521, EPA promulgated emission standards for PM, NO<sub>x</sub>, and other pollutants applicable to motor vehicles and motor vehicle engines, including heavy duty diesel trucks.
6. Under section 202(m) of the Act, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require heavy-duty diesel trucks to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD systems."
7. Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under Title II of the Act, where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.
8. Under section 208(a) of the Act, 42 U.S.C. § 7542(a), the EPA may require any person who is subject to the motor vehicle emission and fuel requirements of the Act to perform tests and provide information necessary to determine whether the person has acted in compliance with the Act's requirements and the regulations promulgated thereunder.

### **FACTUAL BACKGROUND**

9. H&S Performance, LLC, is a Utah limited liability company.
10. H&S is a "person," as that term is defined in section 302(d) of the Act, 42 U.S.C. § 7602(e).
11. On July 20, 2011, the EPA sent an information request to H&S under section 208(a) of the Act, 42 U.S.C. § 7542(a) (Information Request).
12. The Information Request required H&S to provide information on motor vehicle components that it manufactured, sold or offered for sale during the period of January 1, 2010, to July 20, 2011, that change, affect, or simulate the operation of a motor vehicle's DPF system, or any other sensors or signals related to the DPF system.

13. The Information Request also required H&S to identify each component installed, sold, offered for sale, or manufactured by H&S during the period of January 1, 2010, to July 20, 2011, whose effect is to bypass, defeat, or render inoperative, a motor vehicle emission control device or an element of design intended to control motor vehicle emissions, and that were marketed for use with model year 2003 and later diesel-powered motor vehicles designed and built by the vehicle manufacturer for use on public roads.
14. A DPF is designed to limit harmful emissions of PM and other pollutants. Heavy-duty diesel engine-powered (HDDE) truck manufacturers began designing and building highway trucks using DPFs starting in 2007 in order to meet more stringent PM emission standards.
15. An EGR system reduces emissions of NO<sub>x</sub> generated from fuel combustion. HDDE truck manufacturers began designing and building trucks using EGR systems in order to meet more stringent NO<sub>x</sub> standards that went into effect in 2004.
16. A vehicle's DPF and EGR work in conjunction with the vehicle's OBD system, which monitors the emission-related components for malfunction or deterioration that could cause the vehicle to fail to comply with the Act's emission standards.
17. The DPF, EGR and OBD are components of a motor vehicle's emission control system.
18. H&S responded to EPA's Information Request on August 20, 2011, and indicated that from January 1, 2010, through July 20, 2011, H&S sold (a) "DPF delete" exhaust replacement pipes for several models of Dodge, GM and Ford HDDE-powered motor vehicles; (b) EGR delete kits that "remove[] the EGR and EGR Cooler," and (c) electronic tuning devices that connect to a motor vehicle's OBD system port and "reprogram [the] vehicle ECM for added power."
19. The vehicle models for which H&S manufactured, offered for sale, and sold DPF delete kits, EGR delete kits, and electronic tuning devices are covered by certificates of conformity from EPA certifying that the vehicle models have demonstrated compliance with applicable emission standards.
20. The manufacturers of the vehicle models for which H&S manufactured, offered for sale, and sold DPF delete kits, EGR delete kits, and electronic tuning devices, certified the vehicle models as meeting EPA emission standards based on certified design configurations that included the use of DPF, EGR and OBD systems.
21. H&S knew or should have known that the DPF delete kits, EGR delete kits, and electronic tuning devices that it manufactured, offered for sale, and sold bypass, defeat, or render inoperative emission-related devices or elements of design of a motor vehicle, and were being offered for sale or installed for such use or put to such use.

## VIOLATIONS

22. H&S's DPF delete kits, EGR delete kits, and electronic tuning devices are products that are intended to bypass, defeat or render inoperative emission related devices or elements of design that are installed on a motor vehicle to meet the Act's emission standards.



23. The manufacture, sale, offering for sale, or installation of a device that bypasses, defeats, or renders inoperative a vehicle's DPF, EGR or OBD system is prohibited under section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).
24. H&S has committed over 26,000 violations of section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), by selling the DPF delete, EGR delete, and electronic tuning devices.

#### **ENFORCEMENT AUTHORITY**

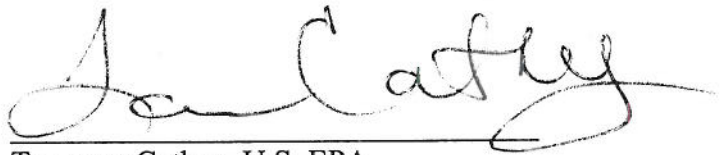
25. Persons violating section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under section 204 of the Act, 42 U.S.C. § 7523.
26. Persons violating section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to \$3,750 for each violation pursuant to section 205(a) of the Act, 42 U.S.C. § 7524(a), and the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461, Pub. L. No. 101-410, enacted October 5, 1990; 104 Stat. 890 (1990); *amended by* the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701; Pub. L. No. 104-134, enacted April 26, 1996; 110 Stat. 1321-373)). 73 Fed. Reg. 75340, 75345 (Dec. 11, 2008); 40 C.F.R. Part 19.
27. Section 205(a) of the Act, 42 U.S.C. § 7524(a), states that a violation of section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), is a separate offense with respect to each part or component.

### Certificate of Mailing

I, Tawanna Cathey, certify that I sent a Notice of Violation under the Clean Air Act, File No. AED/MSEB # 7992, by Certified Mail, Return Receipt Requested, to:

Mr. Casey W. Shirts  
H&S Performance, LLC  
4160 S. River Rd.  
St. George, UT 84790

on the 30<sup>th</sup> day of May 2012.



Tawanna Cathey, U.S. EPA

Certified Mail Receipt Number: 7012 0470 0000 2061 3807